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EXAMINER

BORLINGHAUS, JASON M

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/773,139
Filing Date: January 31, 2001
Appellant(s): OTERO ET AL.

Nathaniel Levin
For Appellant

MAILED

JUN 13 2006

GROUP 3600

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/11/06 appealing from the Office
action mailed 12/01/05.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6317728

Kane

10-1998

Kent, Allen and Williams, James G. Encyclopedia of Microcomputers, vol.

9. Marcel Dekker Inc. (1992) pp. 91 - 92.

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Sheimo, Michael D. *Stock Market Rules*. 2nd Edition. McGraw-Hill. (1999)
pp. 148-150.

Merz, K.J. & Rosen J. *The Handbook of Investment Technology*. McGraw-Hill. (1997) pp. 168 - 169.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 8– 9, 19, 20 – 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane (US Patent 6,317,728) in view of Kent (Kent, Allen & Williams, James G. *Encyclopedia of Microcomputers*. vol. 9. Marcel Dekker Inc. NYC, NY. 1992. pp. 91 – 92) and Sheimo (Sheimo, Michael D. *Stock Market Rules*. 2nd Edition. McGraw-Hill. 1999. pp. 148 – 150).

Regarding Claim 8 and 23, Kane discloses an apparatus/article for computerized trading comprising:

- a first algorithm plug-in (agent) for implementing a trading strategy (“rules and logic which evaluate market and specific equity behaviors”) (see col. 7, lines 9-12);
- a second plug-in (agent) for implementing a trading strategy (“rules and logic which evaluate market and specific equity behaviors”) (see col. 7, lines 9-12);
- an engine (executing device - figure 1, 11) for providing service to said first and second plug-ins, whereby said first and second plug-ins are implemented in said engine in order to execute a trade (see col. 5, lines 45-55);
- a third algorithm plug-in (see col. 7, lines 9-12);
- a fourth market plug-in (see col. 7, lines 9-12); and
- whereby either of said third or fourth plug-ins (agents) may be substituted (“update of trading rules and settings”) for either said first plug-in or second plug-in respectively, in said engine, in order to execute a trade (see col. 5, lines 45-55).

Kane does not teach an apparatus for computerized trading comprising:

- wherein said second market plug-in implements a first limit on trading volume applicable in a first market and said fourth market plug-in implements a second limit on trading volume applicable in a

second market, the second limit on trading volume being different from the first limit on trading volume.

Operating in multiple markets is old and well-known in the art of investment management and financial management, as evidenced Kent which states "The new trading activities of arbitrageurs, trading on slight differences in prices between markets...add to the volume of transactions in the security markets." (see p. 91). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane by incorporating the ability to operate in multiple markets, as disclosed by Kent, to take advantage of arbitrage opportunities and in recognition that financial instruments trade on multiple exchanges.

Implementing a limit on trading volume is old and well-known in the art of investment management and financial management, as evidenced by Sheimo which states that an Immediate or Cancel (IOC) Order "...specifies a maximum quantity, but it can be less. It says to buy (sell) 2,000 shares right now if you can. If you cannot, buy (sell) 1,500 or 1,000 shares and cancel the remainder of the order." (see p. 149). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane and Kent by incorporating the ability to implement limits on trading volume, as disclosed by Sheimo, to take advantage of an old and well-known order modifier utilized in existing financial markets.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane, Kent and Sheimo to allow for any

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limitations on trading volume that the inventor desired, such as implementing the same trading limits in multiple markets or implementing different trading limits in multiple markets.

Regarding Claim 9, Kane discloses an apparatus wherein said first and third algorithm plug-ins (agents) implement trading strategies selected from a group consisting of: Short Sell (see col. 19, lines 43-45).

Regarding Claim 19, further method claim would have been obvious from apparatus/article claims rejected above, Claims 1 and 23, and is therefore rejected using the same art and rationale as outlined above.

Regarding Claim 20 and 21, further method claim would have been obvious from apparatus/article claim rejected above, Claim 9, and are therefore rejected using the same art and rationale.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kane, Kent and Sheimo, as in Claim 19, and in further view of Barber (US Patent 6,173,292).

Regarding Claim 22, Kane discloses a computerized trading method as relied upon in Claim 19 above.

Neither Kane, Kent nor Sheimo teach that the method further comprises:

- a step on initiating a recovery mechanism in the event of system failure.

Barber discloses a computerized system that does initiate a recovery mechanism in the event of system failure (see col. 4, lines 65+).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane, Kent and Sheimo by incorporating a recovery mechanism in the event of system failure, as disclosed by Barber, to protect against data loss.

Claims 28 and 35 rejected under 35 U.S.C. 103(a) as being unpatentable over Kane, Kent and The Handbook (Merz, K.J. & Rosen, J. *The Handbook of Investment Technology*. Mc-Graw Hill. 1997, pp. 168 – 169).

Regarding Claim 28, Kane discloses a method for computerized trading, comprising:

- providing a plurality of algorithm plug-ins, each of the algorithm plug-ins for implementing a respective trading strategy from a plurality of trading strategies, all of the trading strategies being different from each other. (“The securities trading system according to the invention may further include a plurality of agents, each agent operating in response to a dedicated one of the buy/sell rules, and wherein each of the agents has a respective input for commonly receiving the buy/sell data.” – see col. 3, lines 10 –14). (“...all agents represent different buy and sell rules...” – see col. 5, lines 10 - 11);
- providing a plurality of market plug-ins (agents) for implementing rules (“rules and logic which evaluate market and specific equity behaviors” - see col. 7, lines 9-12) in a plurality of markets, all of the markets being different from each other (“...communicating with at

- least one securities exchange...” – see col. 3, line 23 – establishing that the Kane’s trading system can operate in several markets);
- configuring an engine with the selected one of the algorithm plug-ins and with the selected one of the market plug-ins, the engine being for providing to the selected one of the algorithm plug-ins access to market data (“...a data acquisition system having an input communicating with at least one securities exchange for receiving buy/sell data...” – see col. 3, lines 23 – 24) and for sending orders on behalf of the selected one of the algorithm plug-ins (“...the agents having outputs communicating with the securities exchange for executing the buy/sell orders...” – see col. 3, lines 33 – 35) and for receiving notification of executions of orders on behalf of the selected one of the algorithm plug-ins. (“The system supports alphanumeric paging to pagers and PCS phones, enabling the remote notification of executed trades, account balances, etc.” – see col. 12, lines 2 – 4 – establishing that Kane’s trading system receives notification of executed trades); and
 - using the configured engine to carry out trades in accordance with the trading strategy implemented by the selected one of the algorithm plug-ins and in accordance with market rules implemented by the selected one of the market plug-ins. (“Generally, all agents make a recommendation as to the disposition of a respective security and/or commodity and a vote is

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taken of all decisions of the respective agents by a voting algorithm contained e.g. in the decision logic. The result of the vote is transmitted via one of the "buy long" data channel or the "sell short" data channel, and the decision is executed in the executing device ...” – see col. 5, lines 45 – 55).

Kane does not teach a method for computerized trading, comprising:

- providing market plug-ins, each market plug-ins for implementing rules for a respective market;
- selecting one of the algorithm plug-ins; and
- selecting one of the market plug-ins.

The Handbook discloses:

- providing a market plug-in (compliance module), each market plug-in (module) for implementing rules for a respective market. (see p. 168 – 169).

Operating in multiple markets is old and well-known in the art of investment management and financial management, as evidenced Kent which states “The new trading activities of arbitrageurs, trading on slight differences in prices between markets...add to the volume of transactions in the security markets.” (see p. 91). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane by incorporating the ability to operate in multiple markets, as disclosed by Kent, to take advantage of arbitrage opportunities and in recognition that financial instruments trade on multiple exchanges.

Modular programming and the selection/implementation of modules for use is old and well known in the art of computer programming and computer system design. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane and Kent by incorporating the ability to select plug-ins (modules) as required for implementation of the system to provide the system functionality.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane and Kent by incorporating a compliance module, as disclosed by The Handbook, to ensure that trades conducted on the system complied with rules for the respective market in which trades were conducted.

Regarding Claim 35, further apparatus claim would have been obvious from method rejected above, Claim 29, and is therefore rejected using the same art and rationale.

Claims 29 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane, Kent and The Handbook, as in Claim 28 above, and in further view of Sheimo.

Regarding Claims 29, Kane discloses a method wherein:

- a market plug-in (see col. 7, lines 9-12)

Kane does not teach a method wherein:

- a first one of said market plug-ins implements a first limit on trading volume and a second one of said market plug-ins implements a

second limit on trading volume, the second limit being different from the first limit.

Operating in multiple markets is old and well-known in the art of investment management and financial management, as evidenced Kent which states "The new trading activities of arbitrageurs, trading on slight differences in prices between markets...add to the volume of transactions in the security markets." (see p. 91). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane by incorporating the ability to operate in multiple markets, as disclosed by Kent, to take advantage of arbitrage opportunities and in recognition that financial instruments trade on multiple exchanges.

Implementing a limit on trading volume is old and well-known in the art of investment management and financial management, as evidenced by Sheimo which states that an Immediate or Cancel (IOC) Order "...specifies a maximum quantity, but it can be less. It says to buy (sell) 2,000 shares right now if you can. If you cannot, buy (sell) 1,500 or 1,000 shares and cancel the remainder of the order." (see p. 149). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane and Kent by incorporating the ability to implement limits on trading volume, as disclosed by Sheimo, to take advantage of an old and well-known order modifier utilized in existing financial markets.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane, Kent and Sheimo to allow for any

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limitations on trading volume that the inventor desired, such as implementing the same trading limits in multiple markets or implementing different trading limits in multiple markets.

Regarding Claim 36, further apparatus claim would have been obvious from method claim rejected above, Claim 29, and is therefore rejected using the same art and rationale.

Claim 30 – 32 and 37 - 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane, Kent and The Handbook, as in Claim 28, and in further view of VNR (Brownstone, D.M. & Franck, I.M. *The VNR Investor's Dictionary*. Van Nostrand Reinhold Company. New York. 1981. pp. 150 & 292) and The Times (Armstrong, P., *Exchanges Closer to Single Stock Market*. *The Times*. September 24, 1999. p.33).

Kane discloses a method for computerized trading wherein there are a plurality of trading strategies implemented respectively by said algorithm plug-ins (“...all agents represent different buy and sell rules...” – see col. 5, lines 10 - 11) and that the algorithm plug-ins include:

(d) a short selling strategy (see col. 19, lines 43-45).

Neither Kane, Kent nor The Handbook teach that the algorithm plug-ins comprise at least two/three/four of the group of trading strategies consisting of:

(a) a volume-weighted-average-price strategy;

(b) a ratio strategy in which a first instrument is bought and a related instrument is sold in response to a certain ratio between respective prices of the first instrument and the related instrument;

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(c) a hedging strategy;

(e) a stop loss strategy;

(f) an "iceberg" strategy in which a part that is less than all of an order is sent to market at any given time; and

(g) an auto trader strategy to determine whether a trade is to be sent to market or sold from an account.

VNR discloses trading strategies consisting of:

- (c) a hedging strategy. ("In the securities or commodities markets, hedging is the simultaneous execution of present and future transactions in the hope of minimizing risk." – see page 150); and
- (e) a stop loss strategy. ("A securities order carrying instructions to sell specified securities at the point where their market value declines to a stated price" – see page 292).

The Times discloses a trading strategy consisting of:

- (f) an "iceberg" strategy in which a part that is less than all of an order is sent to market at any given time. ("...'iceberg orders', by which fund managers wanting to sell a big line of stock can drip-feed it into the market to prevent depressing the price.." – see page 33).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane, Kent and The Handbook by incorporating algorithms such as a short sell strategy, a hedging strategy, a stop loss strategy and an "iceberg strategy" as established by Kane, VNR and The Times to allow the algorithm plug-ins to implement common trading strategies.

Regarding Claims 37 - 39, further apparatus claims would have been obvious from method claims rejected above, Claims 30 – 32, and are therefore rejected using the same art and rationale.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kane, Kent and The Handbook, as in Claim 28, and in further view of Freeny (US Patent 6,594,643).

Regarding Claim 33, Kane discloses a method of computerized trading further comprising:

- an algorithm plug-in. (see col. 7, lines 9-12)

Neither Kane, Kent nor The Handbook teach a method of computerized trading further comprising:

- parameterizing the selected one of the algorithm plug-ins to execute at least one trade.

Freeny discloses a method of computerized trading further comprising:

- parameterizing (“predetermined criterion entered into the individual trading computer by an individual via the input device” – see col. 2, lines 53 – 59) the selected one of the algorithm plug-ins to execute at least one trade. (“The predetermined trading criteria include instructions, such as buy and sell orders, or algorithms capable of being used to analyze investment data to generate a trade request to buy and/or sell one or multiples of an investment item or products.” – see col. 3, lines 22 – 26).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane, Kent and The Handbook by incorporating the ability for parameterizing the system's algorithm plug-ins and allowing the user to execute at least one trade based upon those algorithm plug-ins, as disclosed by Freeny, to allow the user to execute any trade or employ any strategy, whether a strategy common to the industry or personally devised, while using the trading system.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kane, Kent and The Handbook, as in Claim 28, and in further view of Martyn (US Patent 6,195,647).

Regarding Claim 34, Kane discloses a method of computerized trading further comprising:

- algorithm plug-ins. (see col. 7, lines 9-12);

Neither Kane, Kent nor The Handbook teach a method of computerized trading wherein:

- the selecting of one of the algorithm plug-ins includes selecting a selection from a pull-down menu.

Martyn discloses a method of computerized trading wherein the selecting of one of the functions includes selecting a selection from a pull-down menu. ("Menu bar includes several pull-down menus..." – see col. 4, lines 48 – 49 and figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kane, Kent and The Handbook by

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incorporating the ability for selecting the desired selection from a pull-down menu, as was done by Martyn, to make the trading system user friendly.

(10) Response to Argument

In response to appellant's argument concerning the §103 rejection of Claims 8 – 9 and 19 - 23, specifically applicant's argument that such Claims are not obvious in view of prior art references and, furthermore, said references, neither alone nor in combination, teaches the asserted claim limitations, examiner respectfully disagrees.

The primary prior art reference, Kane, discloses “a securities trading system” that utilizes “agents”, modular system components each of which is encoded with a specific trading strategy, “a respective buy/sell rule.” (see abstract). These agents contain “rules and logic” that are pertinent to both “evaluate [the] market and specific equity behaviors.” (see col. 7, lines 9 – 15). As such, said modular agents (plug-ins) implement both trading strategies (algorithm plug-ins for implementing a trading strategy) and strategies based upon the market (market plug-ins). (Parenthetical language is appellant Claim language).

Kent, an additional prior art reference, was utilized to illustrate that an individual trading in multiple markets is old and well known in the art of investment management and financial management, as Kent discloses the “trading activities of arbitrageurs, [traders] trading on slight differences in prices between markets.” (see p. 91).

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Shiemo, an additional prior art reference, was utilized to illustrate that the implementation of a limit on trading volume is old and well known in the art of investment management. Shiemo, specifically, is directed to the utilization of Immediate or Cancel (IOC) orders in which the order “specifies a maximum quantity [to be traded], but it can be less.” (see p. 149). Appellant concedes as much by stating that “an IOC, like any limit or even ‘market’ order, simply states a maximum quantity of shares, options, contracts, etc. for which the order is to be executed.” (emphasis added, appeal brief, p. 7).

Appellant seeks to differentiate Shiemo from the claim language by asserting that Shiemo “only governs the quantity of shares, etc. to be bought or sold in one particular transaction” while “a limit on trading volume is applied to an aggregation of transactions, and thus has effect beyond a single transaction.” (emphasis added, appeal brief, p. 7). However, no such “aggregation of transactions” was cited in the claim language. Therefore, examiner asserts that an IOC order which states a maximum quantity for which the order is to be executed, is a limit on trading value, as the executed order, sets a limit on trading volume, “a maximum quantity” to be traded.

Appellant also asserts that examiner’s argument is merely a “product of hindsight” and that the “such a new function...is not taught or suggested by the prior art, considered as a whole.”

First, the examiner asserts that “[a]ny judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary

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skill at the time claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, reconstruction is proper." In re McLaughlin, 170 USPQ 209, 212 (CCPA 1971).

Second, the examiner asserts that such modification is suggested by the prior art, considered as a whole. Kane discloses "a securities trading system" of modular construction, each "agent" or plug-in is encoded with "a respective buy/sell rule", implementing both trading strategies and evaluating the applicable market. (see abstract). An IOC, as disclosed by Shiemo, is a limit on trading volume, and, as such, serves as a buy/sell rule. As stated in the Office Action dated 12/01/05, it would have been obvious to one of ordinary skill in the art to have modified the prior art to utilize "an old and well-known order modifier utilized in existing financial markets" and to allow the system "to take advantage of arbitrage opportunities." (see pp. 4 – 5).

Appellant also asserts that even if modified, the modular agents, as disclosed by Kane, "would remain algorithm plug-ins and would not thereby become market plug-ins which implement limits in trading volume." (see appeal brief, p. 8). However, examiner asserts that such a distinction is merely a matter of perception. Kane has agents that "evaluate [the] market and specific equity behaviors" and implement trading strategies. (supra). Whether an IOC is encoded on an agent termed a "market plug-in" or an "algorithm plug-in" is irrelevant, as the terminology for the agent encoded with the relevant volume limit is immaterial to the functioning of the device.

In response to appellant's argument concerning the §103 rejection of Claims 28 and 35, specifically applicant's argument that such Claims are not obvious in view of prior art references and, furthermore, said references, neither alone nor in combination, teaches the asserted claim limitations, examiner respectfully disagrees.

The primary prior art reference, Kane, discloses "a securities trading system" that utilizes "agents", modular system components each of which is encoded with a specific trading strategy, "a respective buy/sell rule." (see abstract). These agents contain "rules and logic" that are pertinent to both "evaluate [the] market and specific equity behaviors." (see col. 7, lines 9 – 15). As such, said modular agents (plug-ins) implement both trading strategies (algorithm plug-ins for implementing a trading strategy) and strategies based upon the market (market plug-ins). (Parenthetical language is appellant Claim language).

Kent, an additional prior art reference, was utilized to illustrate that an individual trading in multiple markets is old and well known in the art of investment management and financial management, as Kent discloses the "trading activities of arbitrageurs, [traders] trading on slight differences in prices between markets." (see p. 91).

The Handbook, an additional prior art reference, discloses the use of a "compliance module" encoded with "a set of decision rules" which ensure that trades "do not violate...SEC rules." (emphasis added, see p. 168).

Appellant asserts that The Handbook, a prior art reference, fails to "refer to rules for specific markets" and "nothing in the reference language that would instruct the person of ordinary skill to develop a compliance module to implement rules that apply to a particular market." (see Appeal Brief, p. 9).

Examiner asserts that Kane discloses "a securities trading system" of modular construction, each "agent" or plug-in is encoded with "a respective buy/sell rule", implementing both trading strategies and evaluating the applicable market. (see abstract). As stated in the Office Action dated 12/01/05, it would have been obvious to one of ordinary skill in the art to have modified the prior art to utilize to allow the system to operate in multiple markets, as disclosed by Kent, "to take advantage of arbitrage opportunities." (see p. 9). With that in mind, examiner asserts that it would have been obvious, as stated in the Office Action dated 12/01/05, to have modified the prior art through incorporation of a compliance module, as disclosed by The Handbook, "to ensure that trades conducted on the system complied with rules for the respective market in which trades were conducted." (see p. 9).

The Handbook stated that the compliance module would ensure conformity with "SEC rules" which would be applicable to US-based markets but should the system conduct trades in foreign markets, such as the Tokyo stock exchange, surely said foreign markets would have their own rules to enforce. And as there is motivation for the system to operate in different markets, as disclosed by Kent, said compliance module would need to be modified to provide compliance with the various markets.

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In response to appellant's argument concerning the §103 rejection of Claims 29 and 36, as appellant's arguments concerning Claims 29 and 36 are similar to applicant's arguments concerning previously discussed claims, examiner refutes applicant's arguments using the same art and rationale as applied against applicant's arguments concerning previously discussed claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Borlinghaus


Examiner

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Conferees:

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